IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 206 of 1976

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

PARMAR SURSANGJI DHABAJI

Appearance:

Mr.A.G. Uraizee, AGP, for Appellant

Some respondents served.

Some respondents deleted.

MR KK CHOKHAWALA for other respondents.

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 15/01/97

ORAL JUDGEMENT

1. This is an appeal under section 100, CPC, filed by the State of Gujarat (original defendant no.1).

2. This appeal constitutes a prime example of litigation indulged in for the sake of litigation, for the sake of creating a controversy, for the sake of

continuing the controversy, and for the sake of prolonging the litigation beyond just and reasonable limits, merely because the State happened to be made a defendant in the suit. As the facts discussed hereinafter will amply demonstrate, the litigation could have been put to a final end at the stage of written statement itself, and/or soon thereafter. In any case, there was no justification on the part of the State to prefer a regular civil appeal under section 96 CPC nor the present appeal under section 100 CPC. In fact the suit was filed in 1969, and the second appeal is being disposed of today in the year 1997, showing that the litigation has been unnecessarily kept alive and protracted for over 27 years, merely because there was no proper application of mind at the proper stage.

3. The pertinent facts, in brief, leading to the present litigation are as under:

3.1 The suit viz. Civil Suit No.499/69 was originally filed by three plaintiffs being a representative suit under Order 1, Rule 8, wherein plaintiff nos.4 to 82 also joined later. The substance of the plaintiffs' case was that they are residents of a hamlet called Jora-Pagina Muvada on the outskirts of village Dabhoda, taluka and district Gandhinagar, and as residents of the said hamlet they have an immemorial right of pasturage for their cattle in respect of survey no.1199 admeasuring 21 acres, 36 gunthas (hereinafter referred to as `the suit land').

3.2 There is no dispute, and this aspect has also been asserted by the appellant State in its written statement at Exh.34, that the said village Dabhoda has three hamlets viz. (1) Salujina Muvada, (2) Butakiva and (3) Chhapra. It appears that when the plaintiffs referred to the hamlet in question as Jora-Pagina Muvada, they are referring to the old and ancient name, which corresponds to the more recent name of the same hamlet at serial no.1 viz. Salujina Muvada.

3.3 It is also pertinent to note that the plaintiffs' case as propounded in the plaint and in the evidence led before the trial court, was that the plaintiffs asserted a right to graze their cattle on the suit land, such right being an immemorial right and a right also accruing on account of the fact that the said land was shown in the revenue records as set apart for "common pasturage". It is also pertinent to note that the declaration and consequential relief sought by the plaintiffs was confined to their own rights, i.e. the rights exercised

and whose protection was sought, for the purpose of grazing the cattle of the residents of the hamlet Jora-Pagina Muvada. What is required to be emphasised is that the plaintiffs have not at any stage of the litigation asserted or contended that such a right was exclusive to the residents of the said hamlet, and that the residents of the other two hamlets of village Dabhoda are excluded therefrom.

4. It was specifically in respect of the protection of these asserted rights that the plaintiffs prayed before the trial court for a declaration and permanent prohibitory injunction, restraining the State from interfering with their rights of pasturage.

5. In the context of these assertions made in the plaint, the written statement filed by the State at Exh.34 is revealing, both in its simplicity as also its complexity. The essential case pleaded by the plaintiffs, is in fact and substance not denied in the written statement at all. However, by a series of denials which do not go to the root of the plaintiffs' case, the State has created a controversy which has kept the litigation alive for 27 years. The written statement first of all asserts that the suit land has been vested in the village panchayat of Dabhoda in the year 1957, by Entry No.1053 dated 15th August 1957, and that the suit land has been mutated to the name of village panchayat Dabhoda and has been demarcated as "grazing land".

6. The nature and extent of the controversy between the parties would become plain on a proper application of mind to the written statement itself. In the written statement it has been specifically clarified, and the case of the State has been specifically set out, to the effect that the suit land is demarcated and reserved as "common pasturage", but this benefit is for the entire village Dabhoda, i.e. for the benefit of the residents of the three hamlets. This assertion together with other assertions made in the written statement clarify the stand of the State that the right of pasturage upon the suit land is not reserved or confined only to the residents of Jora-Pagina Muvada, but is for the benefit of residents of all the three hamlets. However, to my mind, what is most important and what cannot possibly be overlooked, is that the right of the residents of Jora-Pagina Muvada to use the suit land as common pasturage has not been denied, and indeed cannot be denied, so long as the plaintiffs do not assert such rights to the exclusion of the residents of the other two hamlets. On a plain reading of the plaint it becomes

obvious that the assertions made by the plaintiffs, the declaration sought by the plaintiffs, the consequential reliefs sought by the plaintiffs, and also the decree obtained by the plaintiffs, each deal with only the rights of the residents of the hamlet Jora-Pagina Muvada over the suit land, but not to the exclusion of the residents of the other two hamlets. In other words, it cannot be over-emphasised that so far as the rights of the residents of Jora-Pagina Muvada are concerned, there never was any controversy whatsoever.

6.1 The trial court, on appreciation of the evidence on record, found in favour of the plaintiffs, and decreed the suit. The defendant-State thereupon preferred a regular appeal under section 96, CPC, which was also dismissed. Hence the present appeal under section 100, CPC, by the defendant-State.

7. Even when the decrees passed by the trial court and the lower appellate court are scrutinised, it is found that the rights of the plaintiffs to use the suit lands as common pasturage is conferred upon the residents of the hamlet Jora-Pagina Muvada, without in any manner excluding the residents of the other two hamlets in the exercise of such common rights, if any. It is, therefore, apparent on a proper application of mind that the trial court decree, as confirmed by the lower appellate court, is based only upon the common case of the plaintiffs and the defendant-State.

8. I, therefore, fail to understand why the trial court decree was required to be challenged by the State, or when the lower appellate court confirmed the decree of the trial court, why the State was required to prefer the present Second Appeal. It appears to me to be obvious that any reasonably prudent and competent officer of the State who had applied his mind to the facts of the case would have realised that the decree as passed by the trial court and, as confirmed by the lower appellate court, does not in any manner adversely affect the interest of the State, nor do they in any way work contrary to the case set up by the State in its written statement. This absence of proper application of mind is, unfortunately, a sign of the times we are passing through, where the State feels that every decree or order passed in any legal proceeding, granting any relief to the plaintiff or to the petitioner, (where the State is a defendant or respondent) must necessarily be challenged. I can only express the desirability of the achievement of a minimum goal, that unnecessary and wasteful litigation be avoided on a proper application of mind by the

appropriate officers of the State, as and when the relevant files cross their tables.

9. In the premises aforesaid it is obvious, firstly, that the decree passed by the trial court, as confirmed by the lower appellate court, does not in any manner work adverse to the interests of the State, and secondly, that both the said decrees are based entirely on findings of fact, and no substantial question of law is involved which would require further examination in the present appeal under section 100 CPC. This appeal is, therefore, dismissed with costs.

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